

**From:** Michael Thomas (San Diego)  
**To:** 'microsoft.atr(a)usdoj.gov'  
**Date:** 1/25/02 12:58pm  
**Subject:** Microsoft Settlement

To whom it may concern:

I would like to make my comments against the proposed Microsoft Settlement of the Antitrust suit against them, pursuant to the Tunney Act. I oppose the Settlement in its current form.

The Proposed Final Judgment (PFJ) has many issues that do little or nothing to prevent Microsoft from continuing their monopoly of the personal computer operating system market, and is therefore not in the public's interest. I agree with all of the problems identified by Dan Kegel's analysis of the PFJ (on the Web at <http://www.kegel.com/remedy/remedy2.html>).

I would like to expound on one of the issues that affects my interests the most. If I would like to purchase a computer from any of the major Original Equipment Manufacturers (OEMs) in the market (Gateway, Dell, HP, Compaq), but would like to get a computer with a freely available Open Source Operating System (such as Linux, OpenBSD, etc.), I am unable to do so. This is because these OEMs have found it fiscally unfeasible to offer such alternative Operating Systems.

I would like to point out the oddity of the statement that an OEM can not sell a computer with an operating system that incurs no cost to them, because it is fiscally unfeasible. This unfeasibility derives from the fact that these OEMs entered into contracts that allow them to purchase a Windows Operating System at a lower price, due to Market Development Allowances -- in effect, discounts. These contracts prevent the OEMs from selling other Operating Systems, by threatening to no longer sell them the Windows Operating System at a lower cost, effectively raising the cost of their manufactured PCs, which leads to fewer sales for that OEM (due to competition amongst the OEMs).

The PFJ has no recourse for this issue, and in fact allows such things. The PFJ prevents Microsoft from retaliating against OEMs that ship computers that have a Windows Operating System and a non-Microsoft Operating System, but makes no mention for computers that have only a non-Microsoft Operating System. Microsoft is given free reign to retaliate against OEMs that want to sell machines in a configuration that will have either a Windows Operating System or a non-Microsoft Operating System. This is not the way to prevent Microsoft's monopoly from continuing. Instead, it furthers it, allowing Microsoft to force OEMs to sell computers that contain their products.

This is but one of the many things I find problems with in the PFJ. Again, I oppose the PFJ in its current form. Please consider this my plea to

reconsider, and to work to make a stronger, PFJ to better serve the public's interest.

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